

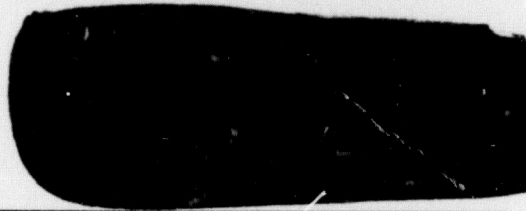
***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1463



IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

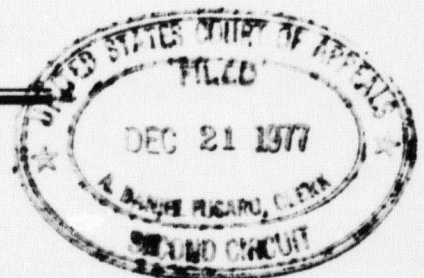
PASCHAL DEMAURO,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

SHEA GOULD CLIMENKO & CASEY
Attorneys for Defendant-Appellant
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New York, New York 10017
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P/S

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1a
Docket Entries.

OFFENSE NO. 0208 1		JUDGE/MAGISTRATE Assigned 0844		U.S. DISTRICT COURT DEMAURO, PASCHAL		Case Filed Mo. Day 02/24		77 0145 01	
OFFENSE MO. 0208 1		Disp. & sentence		No. of Def's 01		JUVENILE		Docket No. 01	
U.S. DISTRICT SECTION 18:1623		OFFENSES CHARGED Perjury before Federal Grand Jury				ORIGINAL COUNTS 1		U.S. MAG. CASE NO.	
II. KEY DATES & INTERVALS		ARREST or U.S. Custody Begin Indictment Information ☒ 2-24-77 Arraignment 3-3-77 Trial 3-3-77 Trial Set For Trial Began 7-25-77 Trial Ended 7-26-77				BAIL • RELEASE Denied ☐ AMT Set ☐ Fugitive ☐ \$ 000 ☐ PSA ☐ Date ☐ 10% Deposit ☐ ☐ Bail Not Made ☐ Collateral ☐ ☐ Status Changed (See Docket) ☐ 3rd Ptry Cust ☐ Other			
Search Warrant Issued Summons Issued Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint)		DATE INITIAL/NO.		MAGISTRATE INITIAL APPEARANCE/DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT		INITIAL/NO. OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW			
U.S. Attorney or Asst. Jeffrey I. Glekel 791-9155		ATTORNEYS Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD Ernest Belfi 55 Front Street Rockville Centre, NY 11570 (516) 764-1070							

* Show last names and suffix numbers of other defendants on same indictment/information:

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c)
2-24-77		Filed Indictment.....Frankel, J.	
3-3-77		Deft. (atty: Ernest Belfi present) pleads not guilty. Ordered F/P. Case assigned to Tenney, J. for all purposes. R.O.R.Frankel, J.	
03-03-77		Filed notice of appearance of atty. by Ernest J. Belfi, 55 Front Street, Rockville Centre, NY 11570 (516) 764-1070	
03-08-77		Deft. (atty. Ernest Belfi) pre-trial conf. held. Trial set for 6-6-77. Tenney, J.	2 3-8 E
06-28-77		Filed deft.'s notice of motion re: order pur. Rule 12(b) for dismissal.	
06-28-77		Filed deft.'s memo. of law re: support of motion to dismiss.	
07-11-77		Filed Govt.'s memo. of law re: opposition to deft.'s motion to dismiss the indictment.	
07-19-77		Filed memo-end. on motion docketed 6-28-77. Motion denied. Tenney, J. m/n	
07-25-77		Filed waiver of trial by jury. APPROVED Tenney, J.	
07-25-77		Deft. (atty.) non-jury trial begun before Judge Tenney.	
07-26-77		Trial cont'd. and concluded. Decision reserved. Tenney, J.	

Docket Entries.

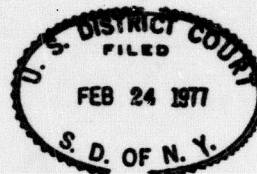
OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V. ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3151(h)

IV. PROCEEDINGS (continued)		V. EXCLUDABLE DELAY			
DATE	DOCUMENT NO.	Interim Section (a)	Start Date and Date (b)	Ltr Code (c)	Total Days (d)
09-16-77	Deft. (atty. present) Court finds deft. guilty as charged. P.S.I. ordered. Sent. adj'd. to 10-31-77. Bail cont'd. 10 days for motion. Tenney, J.				
09-19-77	Filed OPINION # 10353...Accordingly, Demauro's claim that his pre-June 1974 knowledge of money-washing had no relevance to the grand jury's investigation has no basis in law or fact. In sum, the Court finds that the deft. knowingly, made false material declarations to the Feb. 1976 Additional Grand Jury when he testified before that body on 11-11-76 and that the deft. knew those declarations to be untrue. The Court therefore finds that the deft. guilty as charged. Tenney, J. m/n				
09-27-77	Filed Deft's notice of motion for an order granting same a new trial herein for following reasons as stated ret.10/20/77 Rm.1305.				
10-04-77	Filed Govt.'s responsive summation.				
10-04-77	Filed Govt.'s summation.				
10-04-77	Filed deft.'s memo of law in support of motion to dismiss indictment and for judgment of acquittal.				
10-04-77	Filed deft.'s reply to the summation by the prosecutor.				
10-19-77	Filed memo-end. on motion docketed 9-27-77. The motion for a new trial is denied. Tenney, J. m/n				
10-14-77	Filed deft.'s memo. of law: support of motion for a new trial.				
11-04-77	Filed notice of appeal from judgment of 11-4-77. mailed copies to atty. & U.S. Atty.				
11-04-77	Filed Judgment (atty. Ernest Belfi) 1 yr. impr. E.S.S 1 yr. prob. w/o super. and FINED \$1,000. non-committed fine. Deft. cont'd. R.O.R. pending appeal. Tenney, J. issued all copies				
11-10-77	Filed Govt.'s request to charge.				
11-10-77	Filed Govt's responsive summation.				
11-16-77	Filed transcript of record of proceedings, dated 7-25-77.				
11-16-77	Filed transcript of record of proceedings, dated 7-26-77.				
11-16-77	Filed transcript of record of proceedings, dated 7-27-77.				
11-18-77	Filed notice that the record on appeal has been certified and transmitted.				

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

3a
Indictment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- -x
UNITED STATES OF AMERICA :

-v- :

INDICTMENT

PASCHAL DEMAURO, :

77 Cr.

Defendant. :

----- -x
77 CRIM. 0145

The Grand Jury charges:

1. On the 11th day of November, 1976, in the Southern District of New York, PASCHAL DEMAURO, the defendant, having duly taken an oath as a witness that he would testify truly before the February 1976 Additional Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and inquiring for that District, did unlawfully and knowingly and contrary to said oath make false material declarations.

2. At the time and place aforesaid, the said Grand Jurors, inquiring as aforesaid, were conducting an investigation pertaining to possible violations of United States laws prohibiting conspiracy (Title 18, U.S.C. § 371) and requiring that financial institutions file reports and make records of cash transactions in excess of \$10,000 (Title 31, U.S.C. §§ 1051-1055, 1058-1059, 1081-1082; 31 C.F.R. §§ 103.11, 103.21-103.22, 103.25-103.26, 103.49).

3. It was material to said inquiry to ascertain whether PASCHAL DEMAURO, the defendant, had knowledge that the washing of money, to wit, the exchange of quantities of small bills for large ones, was occurring at branches of Chemical Bank.

402021M
FEB 24 1977

Indictment.

4. At the time and place aforesaid,
PASCHAL DEMAURO, the defendant, appearing as a witness
before the Grand Jury, testified falsely under oath with
respect to the aforesaid material matters as follows:

(False Answers Underscored)

- Q. When is the first time that you learned that money-washing or the exchange of large amounts of money, small bills for large, was going on at Chemical Bank?
- A. Probably in September of '75.
- Q. Didn't Agent Egan make mention of it in the 1974 meeting?
- A. He did not mention it at Chemical Bank. He said banks throughout the country.
- Q. Did he make mention of Mr. Spinelli at that meeting?
- A. He mentioned Spinelli in connection with another matter.
- Q. What did he say concerning Spinelli?
- A. He said that Spinelli was under investigation -- there was an account called Sky Chef and checks of Sky Chef were being laundered through an account called Express Glass at Spinelli's branch 107.
- Q. Did he mention that IRS suspected that Mr. Spinelli was involved in narcotics operations?
- A. Not to my knowledge. He never mentioned that.
- Q. Had you received an anonymous phone call concerning Mr. Spinelli at about that time?
- A. Yes, I did.
- Q. What did the caller say?
- A. To the best of my recollection just, I have a relative who works in Internal Revenue, your Mr. Spinelli is under investigation. That was the end of the call.
- Q. And nothing more was said?
- A. Not on the call, no.

Indictment.

Q. Do you know an individual by the name of Jim Woop, W-o-o-p?

A. Yes, I do.

Q. Do you recall telling him at some time prior to 1972 that the exchange of money was going on at branches of Chemical Bank?

A. To my knowledge, I never remember saying that.

Q. Do you recall an individual by the name of Sam Roberto, R-o-b-e-r-t-o?

A. Yes, I do.

Q. Do you recall him telling you around 1969 that someone at the branch where he works was washing money?

A. I do not recall that, no.

Q. Do you recall Mr. Roberto mentioning the changing of money to you at any time?

A. No. To the best of my knowledge, I do not remember that.

Q. Did it ever come to your attention that an employee of Chemical Bank by the name of Kelly, K-e-l-l-y, first name Paul, was washing money for a customer of the bank?

A. I knew he did something, but I do not recall that it was washing money.

Q. What is it that you recall him doing?

A. All I remembered was that he had received apparently a subpoena to produce some bank records and then subsequently was asked to appear before a Grand Jury or somewhere and when he brought that to my attention I had him contact the legal department at Chemical Bank.

Q. Do you recall telling anyone at Chemical Bank that Kelly had been involved in the washing of money?

A. I do not recall that, no.

Q. Following the anonymous phone call which you received concerning Mr. Spinelli, what if anything did you do?

A. I called Mr. Egan and I talked to Mr. Collishaw.

Indictment.

Q. Did you tell anyone else in the bank about the phone call?

A. Not that I remember, no.

Q. Do you recall making any inquiries of anyone at Chemical Bank at about that time concerning the washing of money?

A. I might have just discussed it in general terms just to find out how it would be done, but nothing specific.

Q. Did anyone working at the bank inform you at that time that money washing was going on?

A. To the best of my knowledge, no.

Q. You have no recollection of anyone telling you that?

A. In what year are you saying now?

Q. 1974.

A. The only knowledge I had at all about washing money was what Mr. Egan told me.

Q. Did you make inquiries of anyone else as to whether it was going on?

A. As I say, just in general terms. I might have tried to find out if something like this was going on in a branch, how would you know it was going on, just in general terms.

Q. Were all your inquiries answered in the negative?

A. I didn't ask if it was going on. I asked how would you be able to detect if it was going on.

Q. Why didn't you ask whether it was going on?

A. I don't know.

5. The aforesaid underlined testimony of PASCHAL DEMAURO, the defendant, as he then and there well knew, was untrue.

(Title 18, United States Code, Section 1623.)

Kenneth H. Turnbull
Foreman

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

Excerpts From Testimony.

12 hper

Collishaw - direct

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ROBERT COLLISHAW, called as a witness
in behalf of the plaintiff, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. PEDOWITZ:

Q Mr. Collishaw, by whom are you employed?

A Chemical Bank.

Q How long have you been employed by the Chemical
Bank?

A 22 years.

Q What is your present position with the Chemical
Bank?

A Vice president in charge of public affairs.

Q How long have you had that position?

A Approximately two years.

Q Since when?

A Since March of 1976.

Q Prior to March of 1976, what had been your job
with Chemical Bank?

A Vice president in charge of Division 5, part of
our Metropolitan Division which included branch offices,
our commercial business in the Bronx, Northern Manhattan,
north of 125th Street, Westchester County and one of our
subsidiary banks in Nyack, the Chemical Bank of Hudson

1 13 hpsr

Collishaw - direct

98

2 Valley.

3 Q Can you tell us how many branches were under
4 your supervision in Northern Manhattan and the Bronx ?

5 A 23.

6 Q How many in Westchester?

7 A Sixteen.

8 Q In Nyack?

9 A Eight or nine. I am not sure how many at that
10 time.

11 Q Sir, when did you first become senior vice
12 president in charge of Division 5 which would encompass
13 Northern Manhattan, the Bronx, Westchester and Nyack?

14 A In the Spring of 1972.

15 Q When you first took that position was the
16 defendant Paschal DeMauro one of the persons reporting to
17 you?

18 A Yes, he was.

19 Q Do you see Mr. DeMauro in the courtroom?

20 A Yes, I do.

21 I: We will concede identification.

22 Q What was Mr. DeMauro's job in 1972?

23 A Mr. DeMauro was in charge -- he was a branch
24 group head and in charge of the 23 offices in the Bronx
25 and Northern Manhattan, responsible for the operation of

1 14 hpsr

Collishaw - direct

99

2 those branches.

3 Q What was Mr. DeMauro's job prior to the Spring
4 of 1972, if you know?

5 A He was the chief operations officer for -- well,
6 basically the same group of branches.

7 Q Branches in Northern Manhattan and the Bronx?

8 A Yes.

9 Q Sir, you just testified that Mr. DeMauro was
10 in charge of the Bronx and Upper Manhattan branches in
11 1972 and reported to you. Did this arrangement continue in
12 1973 and 1974?

13 A Yes, it did.

14 Q Did you speak with the defendant regularly during
15 this period?

16 A Yes, I did.

17 Q How often?

18 A By telephone practically daily. In person, once
19 or twice a week on an average.

20 Q Mr. Collishaw, directing your attention now to
21 April 8th, 1974, did you receive a phone call that
22 evening?

23 A Yes, I did.

24 Q Where were you when you received the phone call?

25 A I was at home.

15 hpsr

Collishaw - direct

100

1

2

Q Can you tell us who called you?

3

A Mr. DeMauro.

4

Q Did you recognize his voice?

5

A Yes, I did.

6

Q What did he tell you?

7

A Mr. DeMauro said that a Mr. Egan of the Internal

8

Revenue Service who had been investigating a matter at Branch

9

107 wanted to talk to us, he is going to be coming into Mr.

10

DeMauro's office the following morning and he indicated

11

he thought it would be a good idea if I sat in on that meet-

12

ing, two heads were better than one and he didn't know

13

exactly what Mr. Egan was going to discuss.

14

Q Do you remember anything more about that con-

15

versation?

16

A No, other than I agreed to attend the meeting.

17

Q Prior to that phone call on April 8th, the evening

18

of April 8th, 1974, had you received any information that

19

that Internal Revenue Service was conducting an investiga-

20

tion at Branch 107?

21

A Yes, I did know that.

22

Q What was the nature of that information and

23

from whom did you receive it?

24

A I received it from Mr. DeMauro who had received

25

a call from Mr. Campisi, assistant manager of the branch,

16 hpsr

Collishaw - direct

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advising Mr. DeMauro the Internal Revenue had been to the branch asking some questions.

Q . When had you received this information about which you just spoke?

A I can't recall exactly. It was a day or so before, at matter of days before that call on the 8th of April.

Q Did you in fact meet with Agent Egan of the Internal Revenue Service the next day, April 9th, 1974?

A Yes, I did.

Collishaw - direct.

11 Q After you had these discussions in Mr. DeMauro's
12 office, what if anything did you do?

13 A The three of us had luncheon and after Mr.
14 Egan left, I indicated to Mr. DeMauro that I thought
15 from what we had heard this morning that our people
16 in the branches were extremely vulnerable to the underworld
17 characters and narcotics dealers and that he should, at the
18 next officers meeting in the Bronx with branch managers
19 remind them of the fact that there is a Bankruptcy Act,
20 that this is an area where our employees might be
21 vulnerable and he agreed to do that.

22 [Continued on next page.]
23
24
25

2/1

1 mcm

Collishaw - direct

2 Q Did you subsequently learn that Mr. De Mauro had
3 in fact followed your suggestion and spoken with the branch
4 managers?

5 A Yes, I did.

6 Q Do you recall approximately when it was that he
7 did this?

8 A I learned from the minutes of that meeting, which
9 was the following week. It would have been ten days or two
10 weeks after our meeting with Mr. Egan. The minutes were
11 usually done promptly.

mcm

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UNITED STATES OF AMERICA
vs.
PASCHAL DE MAURO

77 Cr. 145

New York, New York
July 26, 1977 - 10:15 a.

(Trial resumed.)

THE COURT: We can continue with the other case
now. Do you have a witness?

MR. PEDOWITZ: Yes, your Honor. The Government
would call John Martin.

JOHN S. MARTIN, Jr., called as a witness by
the Government, after having been duly sworn, testi-
fied as follows:

DIRECT EXAMINATION

BY MR. PEDOWITZ:

Q Mr. Martin, what is your profession?

A I'm an attorney.

Q How are you presently employed?

A I'm a member of the firm of Martin, Obermaier &
Morville.

Q Can you tell the Court what are the jobs you have
had as attorney?

A I graduated from Columbia Law School in 1961.
I spent the following year as a law clerk to Judge Leonard P.
Moore of the Second Circuit.

mcm

Martin - direct

From there I entered the United States Attorney's office in this District where I served from 1962 to 1966. From August of 1966 till June of 1967 I was in private practice in Nyack, New York in the firm of Johnson, Hecker and Martin.

In July of 1967 I started in the office of the Solicitor General of the United States where I served until 1969. I left the Solicitor General's office in September of 1969 and entered private practice as a sole practitioner, and ultimately a firm developed that I am with right now.

Q Mr. Martin, in September of 1975 were you retained by the Chemical Bank?

A I was.

Q What were you asked to do by the Chemical Bank?

A Well, at that time I was told that the general counsel of Chemical Bank, John Wynne, had had a meeting with Mr. Bannigan, who then I believe was chief of the Narcotics Section of the United States Attorney's Office.

Mr. Bannigan had informed Mr. Wynne that the U. S. Attorney's Office was looking into certain transactions involving exchanges of currency at various branches of the Chemical Bank and was investigating the question of whether or not there had been a failure to file reports of currency transactions required by the Bank Secrecy Act. The bank had

mcm3

Martin - direct

1 previously been served with some subpoenas calling for it to
2 produce its records, certain records that it was required
3 to produce under the Bank Secrecy Act. There had not been
4 all the records that were required and he was told that
5 the bank itself was the subject of the investigation. In
6 a sense it was a two-part investigation, one the exchanging
7 of currency which may involve bank employees and people who
8 dealt with the bank, and also the possibility that the bank
9 itself could be indicted.
10

11 I was therefore retained to represent the Bank
12 generally in connection with this entire matter. That
13 representation included conducting an internal investigation
14 for the Bank of this possible exchanging of currency.

15 Q As part of your investigation did you interview
16 a number of the employees of the bank?

17 A Yes, I did.

18 Q Approximately how many?

19 A I would say that it was roughly between fifty
20 and a hundred.

21 Q As part of your investigation did you interview
22 a gentleman by the name of Paschal De Mauro?

23 A I did.

24 Q Do you see him in the courtroom?

25 A I do.

mcm4

Martin - direct

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Q Where is he seated?

A The gentleman sitting at the second table all the way on the left as I view him.

MR. PEDOWITZ: Is the identification satisfactory, your Honor?

THE COURT: Yes.

Q When did the interview take place?

A Early October in 1975.

Q Where did it take place?

A The 26th floor of 20 Pine Street, which is the Chemical Building, the 26th floor of the building being the legal department.

Q When you interviewed Mr. De Mauro in early October of 1975, who was present?

A John Wynne, the general counsel of the Chemical Bank.

Q What was said to Mr. De Mauro at the outset of this meeting?

A At the outset of this interview I believe I told Mr. De Mauro what I told everybody whom I talked to in this regard, which was that I had been retained by Chemical Bank. I was a lawyer representing the bank and I was conducting an investigation for the bank of the exchanging of currency in various branches in northern Manhattan and the Bronx; that

mcm

Martin - direct

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1 the bank itself had not made any firm determination as to
2 what action it would take as a result of the investigation;
3 that in the first instance they wanted to learn what the
4 facts were; that the only thing that the bank had determined
5 was that its employees were expected to cooperate in this
6 investigation and if we found that any employee lied to us
7 during that investigation, the fact that the employee lied
8 would in and of itself be considered sufficient grounds for
9 termination.
10

11 Q Mr. Martin, you mentioned earlier that you had
12 interviewed approximately fifty to one hundred employees
13 during the course of your investigation. How many employees,
14 approximately, had you interviewed prior to your interview
15 of Mr. De Mauro?

16 A By this point in time I would have interviewed,
17 I would say, at a minimum, probably thirty people. I'm
18 having a little problem because in addition to --

19 MR. BELFI: I would like to strike his answer
20 as being totally irrelevant to the question.

21 THE COURT: What is your best recollection?

22 THE WITNESS: The best recollection I have is
23 somewhere around thirty, I would say, but it could have been
24 more. I'm having a little difficulty placing it timewise.

25 Q During your conversation with Mr. De Mauro, what

mcm

Martin - direct

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1 did you say to him and what did he say to you?

3 MR. BELFI: At this time I have to object with
4 respect to any conversation or communication between Mr.
5 De Mauro and Mr. Martin. I think it is quite clear at this
6 point that Mr. Martin was acting in his capacity as an
7 attorney. We would like to invoke the privilege of any
8 transactions or communications between client and attorney.
9 I believe that Mr. De Mauro at that time, having been an
10 employee of the Chemical Bank, is covered under the privilege
11 section of the exception.

12 Q Was it your understanding at the time that Mr.
13 De Mauro was your client?

14 A No.

15 Q Who was your client?

16 A At that point in time I was representing the
17 Chemical Bank.

18 Q Did you ever give Mr. De Mauro any reason to
19 believe that you were his attorney?

20 A No.

21 Q Did you ever have any confidential communications
22 with Mr. De Mauro?

23 A None that I considered to be such.

24 Q When you interviewed him was anyone else present?

25 A John Wynne, the general counsel.

mcm

Martin - direct

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THE COURT: Objection overruled.

Q Mr. Martin, what did you say to Mr. De Mauro and what did he say to you?

A As I related previously, I told him of the nature of the investigation; that I was conducting an investigation into the exchanging of currency; that we had reason to believe that it occurred in a substantial number of the branches of Chemical Bank in northern Manhattan and the Bronx.

My recollection is that at the outset we were talking initially about a man named Thomas Spinelli and there was some question concerning the fact that in July of 1973 Mr. De Mauro had received a report that Mr. Spinelli, while down at a training institute at Rutgers University was flashing a lot of money and claimed to have a number of people on his payroll. Mr. De Mauro indicated that, yes, he had received that report and he brought that matter to the attention of Mr. Collishaw, who was his immediate superior; that they had then attempted to undertake some investigation of Mr. Spinelli's accounts; that they found nothing unusual in those accounts, and that that basically concluded their investigation.

I then went to the meeting between Mr. De Mauro and Mr. Collishaw with Agent Egan of the Internal Revenue Service. Mr. De Mauro said that he had received a call from

mcm

Martin - direct

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1 Mr. Egan who said he wanted to see him and that he therefore
2 set up a meeting between Mr. Egan, Mr. Collishaw and himself.
3 That meeting took place -- started at Mr. De Mauro's office
4 up in the Bronx and ultimately they adjourned for lunch at
5 some point in time.
6

7 He said that at that meeting Mr. Egan told him
8 he was conducting an investigation involving Mr. Spinelli's
9 branch, Branch 107, and that the investigation had to do
10 with two accounts maintained at that branch. One was a
11 glass company and the other was a catering company which I
12 think did work for American Airlines.

13 He said that in the course of the meeting and
14 the luncheon that Mr. Egan told he and Mr. Collishaw that
15 the IRS had become aware of the problem that probably existed
16 in all of the commercial banks in New York City, and that
17 is the exchanging of currency for narcotics dealers. Mr. Egan
18 explained that narcotics dealers who get their money off
19 the street in small denominations need bills of large denomi-
20 nation in order to make their bulk purchases and that in
21 order to get those large bills and to exchange the small
22 bills they were willing to pay people at commercial banks to
23 make such an exchange.

24 I asked Mr. De Mauro, I believe, whether or not
25 Mr. Egan in any way tied this activity to Mr. Spinelli, and

mcm

Martin - direct

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1 he said that he did not; that it was more a matter of general
2 interest than of being something specific that related to
3 Mr. Spinelli.
4

5 He said that during the course of this conver-
6 sation he asked -- either he or Mr. Collishaw -- had asked
7 Mr. Egan what should they do about these allegations with
8 regard to Mr. Spinelli, and he said that Mr. Egan told him
9 at that time to do nothing because he didn't want any in-
10 vestigation that Mr. De Mauro and Mr. Collishaw might insti-
11 tute to interfere with his current investigation of Mr.
12 Spinelli.

13 Mr. De Mauro stated that at some later point
14 in time this meeting -- I don't know -- I fix the date --
15 he told me it occurred in April of 1974. He seemed to
16 indicate that at some later time, either in late May or
17 early June he received a call from Mr. Egan who told him
18 that Spinelli was clean; the IRS conducted its investigation
19 and Spinelli was clean.

20 I don't recall anything else that was said during
21 the conversation concerning the meeting with Mr. Egan. There
22 was some conversation concerning an anonymous phone call
23 that Mr. De Mauro said he had received telling him that the
24 IRS was investigating Mr. Spinelli.

25 My recollection of that was that he indicated

mcm

Martin - direct

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1 that that was absolutely his first contact with Mr. Egan.
2 We then went into discussion concerning whether or not Mr.
3 De Mauro had any awareness prior to Mr. Egan's interview
4 with him or indeed prior to the time in September of 1975
5 when I started my investigation of the exchanging of currency
6 taking place in any of the branches of Chemical Bank.
7

8 He said that he had no knowledge that the exchanging
9 ing of currency had occurred at any of Chemical Bank's
10 branches. I asked him when he first heard about the term
11 laundering, whether he ever heard the term laundering. It
12 was in that context that he said that he actually had not
13 heard the term laundering until September of 1975, until our
14 investigation began, but he had, of course, heard of the
15 term small for large, and that is what Mr. Egan had used,
16 but I said did he ever have any knowledge of this exchanging
17 of small for large, or whatever it was called that was going
18 on in the Chemical Bank branches and he said that he did not.

19 I asked him if anybody ever told him that this
20 was going on, and he said that no one ever told him that.

21 And I believe I asked him, "Well, if somebody
22 had told you that there was an exchange of currency going
23 on at Chemical Bank branches would you remember it?" And
24 he said, "Yes," he would remember it if somebody told him
25 but, he had not been told.

mcm

Martin - direct

153

My recollection is that that meeting, Mr. Pedowitz, lasted about a half hour, forty-five minutes. That is generally the substance. There may have been more specific questions.

I'm sure I asked him did anybody ever report to him of this exchanging of currency and he said no, and if he heard about it in any way, and he said no.

I think we spent substantial time on that, because that was an important focus of my --

MR. BELFI: I object to the characterizations.

THE COURT: It is a fair characterization.

Q After this interview with Mr. De Mauro, did you meet with him again?

A Yes.

Q Do you recall when that was and with whom?

A That occurred, I would say, within a week afterwards. I can't pinpoint -- a week, ten days afterwards. It could have been two or three days afterwards.

The meeting occurred in the office of Mr. Murray, who at that time was an executive vice president of Chemical Bank in charge of the branch operations.

Q What do you recall being said at that meeting?

A The meeting covered a lot of the same matters that had been covered at the initial meeting. One thing that

mcm

Martin - direct

154

1
2 came up at the initial meeting that also came up here was
3 the question of Mr. De Mauro, after receiving the anonymous
4 phone call that he said he received, said at that point he
5 contacted Mr. Campisi. Mr. Spinelli had been in Branch 107
6 Mr. Campisi was the assistant manager of Branch 107. Mr.
7 Spinelli was the manager.

8 Mr. De Mauro told us that he had tried to check
9 up on these allegations by calling Mr. Campisi and that
10 Mr. Campisi -- that he did talk to Mr. Campisi about this
11 and Mr. Campisi did not tell him that there was anything
12 wrong at Branch 107. I believe at that meeting with Mr.
13 Murray Mr. De Mauro also produced some phone records that
14 he had which indicated that he had had in early April of
15 1974 a telephone conversation from his home, I guess, to
16 Mr. Campisi that he had made at night which lasted over
17 approximately thirty minutes and there was some time spent
18 in discussing what had been said during that phone call.

19
20 (Continued on next page.)
21
22
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25

t2am

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DWjw 1

Martin - direct

2

Q

Mr. Martin, after these interviews with Mr. DeMauro in early October of 1975, what action was taken if any as to Mr. DeMauro by the bank?

3

4

5

A

Well, Mr. DeMauro's services were terminated by the bank.

6

7

Q

Mr. Martin, about a year later in October of 1976, was a civil lawsuit brought against you?

8

9

A

Yes.

10

Q

By whom was the action brought?

11

A

Mr. DeMauro.

12

Q

What was the action premised on?

13

A

The action was one in which I was not the sole defendant. It named also the Chemical Bank, Donald Platten, its chairman, Norben Berkley, the president, John Wynne, the general counsel, Mr. Murry, and myself. There were a number of causes of action alleged. One was basically a wrongful discharge cause of action which sought damages -- I even looked at the complaint recently -- I believe \$500,000.

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There were also some libel causes of action alleged in which the damages sought were \$10 million.

22

23

Q

What was the status of that lawsuit in November of 1976 when Mr. DeMauro appeared in the grand jury?

24

25

1 dwjw 2

Martin - direct/cross

2 A

It was pending as it is today.

3 MR. PEDOWITZ: No further questions, your

4 Honor.

23 dwsr

Kelly - direct

212

P A U L K E L L Y, called as a witness in behalf
of the government, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. PEDOWITZ:

Q Mr. Kelly, are you presently employed?

A Yes, as a packer and shipping clerk at Dobbs
Ferry, New York.

Q Before you became a packer and shipping clerk
in Dobbs Ferry, New York, where did you work?

A Chemical Bank.

Q For what period of time did you work at the
Chemical Bank.

A 1952 to -- December of '53 to October of '75.

Q Prior to working at the Chemical Bank, going to
work at the Chemical Bank in 1952 what had been your
employ?

A I was with the Marine Corps.

Q For what period of time were you with the
Marine Corps?

A '46 to '52.

Q Mr. Kelly, directing your attention to 1967
and early 1968 where were you employed?

A At Burnside Jerome Avenue branch in the

1 24 dwsr

Kelly - direct

213

2 Bronx, Chemical Bank. I think it is Branch 49.

3 Q What was your position at Branch 49 in '67,
4 '68?

5 A Assistant manager.

6 Q During that period of time did you as assistant
7 manager participate in the opening of an account for Rusam
8 Auto Sellers?

9 A Yes.

10 Q In the latter part of 1969 were you working at
11 a different branch?

12 A Yes, I was, Fordham Road in the Bronx, Branch
13 37.

14 Q What was your position at Branch 37 at
15 Fordham Road in 1969?

16 A Assistant treasurer.

17 Q Had the Rusam Auto Sellers account followed
18 you to Branch 37?

19 A Yes, they did.

20 Q What if anything did you do in connection with
21 the Rusam Auto Sellers account in late 1969?

22 A Late '69 unfortunately I exchanged money for
23 Mr. Stanzone on a few occasions.

24 Q Do you recall Mr. Stanzone's full name?

25 A Anthony or Tony, I think, Stanzone, yes.

1
2 Q On approximately how many occasions did you
3 exchange money for Stanzione?

4 A It is a few times. I don't really recall that.

5 Q Was this changing small bills into large?

6 A Yes.

7 Q And how much was involved?

8 A My recollection is five or six thousand dollars.

9 Q On each occasion?

10 A Yes.

11 Q Could it have been more?

12 A On one or two occasions possibly, yes.

13 Q What did you receive in return?

14 A Well, Thanksgiving I know I got about \$20, a
15 bottle, and Christmas I got either 25 or \$50.

16 Q Directing your attention to April of 1973 were
17 you contacted by Internal Revenue Service agents?

18 A Yes, I was.

19 Q Who were those agents?

20 A Mr. McTigue, and Mr. Antonelli, Antocelli or
21 something like that, yes.

22 Q Where did you meet with these IRS agents in
23 April of 1973?

24 A At 100 81st Street and St. Nicholas Avenue,
25 Branch 25.

26 dwsr

Kelly - direct

215

1
2 Q What was your position at that time at Branch
3 25?

4 A Assistant treasurer.

5 Q What did the agents ask you about in April of
6 197 --

7 A They were conducting an investigation on Stanzione
8 and about Rusam Auto accounts, and also about the exchanging
9 of money.

10 Q After you were interviewed by the Internal
11 Revenue Service agents what did you do?

12 A I called Mr. DeMauro.

13 Q And what did you say to him?

14 A I told him that they were up, they were talking
15 about investigating the account of Rusam Auto's, Stanzione's
16 and also about the exchanging of money.

17 Q And what did he say to you?

18 A He told me to contact the legal department.

19 Q What did you do then?

20 A I called the legal department.

21 Q The legal department of the Chemical Bank ?

22 A Yes.

23 Q Do you recall who you spoke to?

24 A Not offhand, no.

25 Q What did they tell you?

27 dwsr

Kelly - direct

216

A Well, in essence sit tight until I hear from them.

Q What do you recall happening next after receiving this information basically "sit tight"?

A I received a call from Bill Smith telling me that he had received a subpoena or summons and that I would be getting one.

Q Who is Bill Smith?

A Is an attorney with the bank.

Q What do you recall happening next?

A I called Bill -- well, I was served with a summons and then I called Bill Smith regarding the summons.

Q Mr. Kelly, I'm now showing you a document marked Government Exhibit 2 for identification. I ask you if you can identify this.

A Yes, this is a copy that I received of the summons.

[Continued on next page.]

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mcm

Kelly - direct

217

Q It is a copy of the summons which you received?

A Yes.

MR. PEDOWITZ: I offer Government Exhibit 2, your Honor.

MR. BELFI: On what ground?

MR. PEDOWITZ: It is an exhibit pertinent to the trial.

MR. BELFI: I haven't seen any foundation for the introduction of the summons.

MR. PEDOWITZ: I'm offering this because in fact he received a summons which required him to go down to the Internal Revenue Service.

MR. BELFI: The witness has already testified to that.

MR. PEDOWITZ: I think we are going to develop that the summons derives out of this Internal Revenue Service question.

THE COURT: You said you just were offering this to substantiate his testimony.

MR. PEDOWITZ: I will offer it at the conclusion of the testimony and your Honor can rule as to whether or not it is relevant.

MR. BELFI: What is the date of that document?

MR. PEDOWITZ: The date of the document is May 2, 1973.

1 mcm2

Kelly - direct

2 Q When you received this summons or a summons, what
3 did you do?

4 A I called Bill Smith of the Legal Department.

5 Q And what were you told to do?

6 MR. BELFI: Objection.

7 THE COURT: Sustained. What happened?

8 THE WITNESS: I recall an appointment was made
9 to go down there to 20 Pine Street to meet with Bill Smith
10 and to go to the Internal Revenue Service.

11 Q Directing your attention to May 15, 1973, what
12 happened?

13 A I went to 20 Pine Street and Bill Smith and I
14 went to the Internal Revenue.

15 Q What is 20 Pine Street?

16 A That was our main office of Chemical Bank.

17 Q Then you went there?

18 A To the Internal Revenue at 120 Church Street.

19 Q Who was with you?

20 A Bill Smith.

21 Q What were you asked about and what did you say
22 when you went down to the Internal Revenue Service?

23 MR. BELFI: Objection to what he was asked.

24 THE COURT: He can testify as to what he told
25 them..

mcm3

Kelly - direct

219

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2 Q What did you tell them?

3 A We went over the records at the Internal Revenue
4 of the Russam Auto account and they asked me if any exchanges
5 of money was --

6 MR. BELFI: I object and ask that it be stricken.

7 THE COURT: Strike it.

8 MR. PEDOWITZ: It seems to me it was relevant
9 as to what he said. The questioning is not offered for the
10 truth of the matter asserted but simply whether he was asked
11 these questions.

12 THE COURT: All right.

13 Q What were you asked and what did you say?

14 A They asked me if I exchanged any money for
15 Stanzone. I told them I exchanged \$5,000 or \$6,000 on a
16 few occasions.

17 Q Was Mr. Smith present during this questioning?

18 A Yes.

mcm

Kelly - cross

231

1
2 Q When did you first make an admission with respect
3 to the money exchanges?

4 A I believe it was when I was at Internal Revenue.

5 Q Who was present at that meeting?

6 A Bill Smith, the attorney for Chemical Bank.

7 Q Bill Smith, the attorney for Chemical Bank, was
8 present when you made your statements about the money ex-
9 changing?

10 A Yes.

11 Q Was that in 1973?

12 A Yes.

13 Q Was Mr. De Mauro ever present dsuring any subse-
14 quent conversations when Mr. Smith wass present?

15 A No.

Opinion, TENNEY, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
UNITED STATES OF AMERICA :

-against- :

77 Cr. 145 (CHT)

PASCHAL DEMAURO, :

Defendant. :
-----XMEMORANDUMAPPEARANCES

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TENNEY, J.

Defendant Paschal Demauro was tried before this Court without a jury on July 25-27, 1977. He was charged in a one-count indictment with making false, material declarations at the time of his appearance on November 18, 1976 before the February 1976 Additional Grand Jury of this Court in violation of 18 U.S.C. § 1623. At that time, the grand jury was conducting an investigation into violations of the Bank Secrecy Act,

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31 U.S.C. §§ 1051-55, 1058-59, 1081-82, and the regulations promulgated thereunder, 31 C.F.R. §§ 103.11, 103.21-.22, 103.25-.26, 103.49, by the Chemical Bank and possible violations of the conspiracy statute. 18 U.S.C. § 371. In his appearance before the grand jury Demauro was questioned about his knowledge of the "washing" of money (also known as the "exchanging" or "laundering" of money) at Chemical Bank branches, an activity wherein large quantities of small bills are exchanged for the same dollar amounts of large bills. Failure to report such transactions in excess of \$10,000 would constitute violations of the Act. 31 U.S.C. §§ 1058, 1061; 31 C.F.R. § 103.22.^{1/}

Up until October of 1975 defendant Demauro was employed by Chemical Bank as a supervisory officer. From 1968 until 1972 he was the Regional Administrative Officer for the branches in the Bronx and Upper Manhattan, reporting to the Regional Vice President who had the overall responsibility for those branches. In 1972 he was named Customer Service Director and given the primary responsibility for the Bronx/Upper Manhattan branches. He held this position, with one interruption in mid-1974, until January 1975. In his appearance before the grand jury, Demauro testified that he did not learn that money-washing was going on at Chemical Bank until September of 1975,^{2/} and specifically denied that he had been told before 1975 by a number of Chemical Bank employees that such was the case. He

also denied that money-washing and its possible connection to narcotics trafficking had been called to his attention in 1974. At trial, the Government sought to prove that Demauro had been informed on many occasions that money-washing was going on, thus demonstrating the falsity of his denials of specific conversations as well as of his general denial of knowledge of money-washing before September of 1975. This evidence involved a number of events in the period from 1968 to 1974.

Events of Early April 1974

The Government first presented evidence concerning several events in early April 1974, particularly a meeting held in Demauro's office and attended by Thomas Egan, a special agent with the Internal Revenue Service's Intelligence Division, and Robert Collishaw, a Vice President of Chemical Bank and Demauro's immediate supervisor. On Monday, April 1, 1974, Agent Egan was notified by the Narcotics Division of the New York City Police Department that on the preceding Friday members of the N.Y.C.P.D. had arrested Anthony D'Ambrosio in possession of some 24 pounds of pure heroin. Egan had previously been informed by the same source that D'Ambrosio was bringing the proceeds of his narcotics operations to Chemical Bank Branch 107 in the Bronx to have such proceeds exchanged or "laundered" with the assistance of Thomas Spinelli, the branch manager. The police had also advised Egan that they

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had uncovered information that D'Ambrosio had participated in an embezzlement scheme through an account called Express Glass at Branch 107 involving Sky Chef, a subsidiary corporation of American Airlines. On the basis of the foregoing information Egan and another agent went to Branch 107 and interviewed Spinelli and also Michael Campisi, the assistant manager, both of whom denied any involvement in either the exchange of large denominations of currency in return for small denominations received from D'Ambrosio or in any embezzlement scheme involving D'Ambrosio. Egan returned to the bank on at least two occasions during the week of April 1, i.e., April 2 and 3, and examined certain records, but Spinelli and Campisi continued to deny any involvement.

However, at around 5:00 p.m. on Monday, April 8, defendant Demauero received an anonymous call, in which the caller, according to Demauero, stated: "I have a relative who works in Internal Revenue, your Mr. Spinelli is under investigation." Demauero had already heard from Campisi that an investigation was being conducted at Branch 107. Following receipt of the anonymous call, Demauero phoned Collishaw at his home. Collishaw already knew of the IRS investigation of Branch 107, and Demauero told him that Egan wanted to talk with Demauero, that Egan was coming to Demauero's office the following morning, and that Demauero thought it would be a good idea if Collishaw were to attend since Demauero did not know exactly

what Egan was going to discuss. Apparently Demauro made no mention of the anonymous call to Collishaw at this time.

Demauro also called Campisi at his home around 7 or 8 o'clock that evening, the conversation lasting approximately one-half hour. Demauro testified at trial that he did not recall anything about the subject of the call. According to Campisi, Demauro reported that he had received an anonymous phone call to the effect that Spinelli was involved with either drugs or narcotics. They then discussed the visits by the IRS agents to Branch 107 and their questioning of Campisi and Spinelli about exchanging money for D'Ambrosio. Campisi told Demauro that he did not believe there was anything wrong at Branch 107 or that Spinelli was involved with drugs or narcotics per se. He did say, in response to Demauro's specific inquiry, that money exchanging was going on all over the Bronx and possibly in Manhattan. This was overheard by Mrs. Campisi on another extension. Demauro and Campisi discussed methods of controlling the exchanging of money, such as restrictions on the amount of large bills a branch could order, depending on its size and volume. Demauro asked Campisi for Egan's name and Campisi gave him the name and Egan's office address.

The following morning around 8:30 a.m. Egan received a call at his headquarters from Demauro, who identified himself and, according to Egan, stated that he had received an anonymous call and that the caller said, "I have a cousin who

works for Internal Revenue Service and you have a problem with Spinelli and narcotics." Demauro asked Egan about his activities at Branch 107, which Egan declined to discuss on the telephone, and they agreed to meet at Demauro's office in the Bronx at 10:00 a.m. When Egan arrived at the meeting place, Demauro advised Egan that he had obtained his name and telephone number from Campisi and then repeated the message from the anonymous caller that "I have a cousin with Internal Revenue Service and you have a problem with Spinelli and narcotics." Egan was then asked about his investigation at Branch 107 and he replied that he had information to indicate that a large amount of money had been embezzled by checks from Sky Chef and that the checks were being processed through the Express Glass account at Branch 107. He further stated that he believed the Express Glass account had been opened by D'Ambrosio, who was a major narcotic trafficker, and that Spinelli was somehow involved with that account. Collishaw asked Egan if he thought Spinelli was selling narcotics. Egan replied that a bank employee need not sell narcotics to be involved in that business, that he could exchange small bills for large bills since narcotics traffickers need large bills for purposes of concealment and to make purchases from their sources who demand payment in large bills. Collishaw testified that Demauro explained the meaning of "exchanging small bills for large" in this conversation. When Collishaw and

Demauro stated that while they could understand a teller or even a head teller probably being corrupted for \$15 or \$25 by a narcotic trafficker since they were not highly paid, it was hard to believe a branch manager or assistant manager could be similarly corrupted. Egan, however, pointed out that the traffickers were willing to pay from one to three percent, so that for a \$100,000 exchange the payment would be from \$1,000 to \$3,000. At trial Egan testified that Demauro later told him that Demauro had realized that Egan was identifying Spinelli as being involved in currency exchanges. Demauro and Collishaw asked Egan what they should do about Spinelli and any activities that he might be involved in at Branch 107, and Egan asked them to take no action until he had completed his investigation, to which they agreed. Egan also stated that the reporting provisions of the Bank Secrecy Act had been held constitutional by the United States Supreme Court^{3/} and that that law should be effective to combat the huge currency transactions by organized crime.

The discussion at Demauro's office occupied about two hours, after which the three men had lunch together. On April 19, 1974, following the meeting of April 9, Demauro addressed a meeting of branch officers and cautioned them against exchanging currency, discussed the possible relationship of such transactions to narcotics, and advised the officers of the IRS investigation.

At trial Egan testified that he received a phone call from Demauro about a month or six weeks after the April 9, 1974 meeting and that Demauro inquired about the status of Egan's investigation. Egan replied that he had completed his investigation and that Demauro was free to take any action he deemed appropriate. Demauro testified that Egan had initiated the call and that Egan told him that Spinelli was "clean," a statement which Egan denies making. In any event, Demauro did not pursue the subject with Spinelli.

Other Events

Four other incidents, all of which preceded the April 9, 1974 meeting, are significant and bear directly or indirectly on the specifications of perjury. Although certain of Demauro's answers to questions before the grand jury concerning these events may not have been perjurious, the incidents themselves demonstrate that Demauro knew about money exchanging long before April 1974, although he probably did not associate it with the narcotics business until his meeting with Egan on April 9.

a) In late 1968 or early 1969, James Woop, assistant treasurer at Branch 25 of the Chemical Bank, learned that Spinelli had been exchanging large quantities of small bills for large. Shortly thereafter Demauro asked Woop whether he was aware of any exchanging of money, to which Woop replied

affirmatively but declined to identify who was exchanging. In his trial testimony Demauro denied that any such conversation took place although he admitted that he knew Woop and that Woop worked under his supervision.

b) In 1969 Samuel Roberto was working directly for Demauro at regional headquarters. Demauro asked Roberto to go to Branch 94 to check out a teller's difference of \$500. When Roberto arrived at Branch 94 he found a Mr. Jones, the branch manager, sitting at a table in the conference room on which table there was piled approximately \$10,000-\$20,000 in small bills which Jones attempted to conceal. Without staying to check out the teller's difference, Roberto returned to Demauro and asked him whether he knew that "book money" was coming into Branch 94. Demauro, who knew that Matthew Barrardi, the Chief Clerk at Branch 94, had repeatedly requested a transfer, replied "Good, maybe Pete Barrardi will stop asking me for a transfer." In his trial testimony Demauro admitted knowing Roberto but claimed that Roberto's testimony as outlined above was untrue.

c) In 1969, Paul Kelly, then assistant treasurer at Branch 37 in the Bronx, had, on a few occasions, exchanged \$5-6,000 or more in small bills into large bills for Anthony Stanzione, a principal of Rusam Auto Sellers. In late April 1973 Kelly, then at Branch 25, was interviewed by two IRS

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agents who told Kelly they were investigating Stanzione and questioned Kelly about exchanges of money he had made for Stanzione and about the Rusam Auto account. After the agents left, Kelly called his superior, Demauro, and told him about the agents and their having spoken to him about the Rusam account and the exchanging of money. Demauro told Kelly to contact the legal department, which advised Kelly to sit tight. Thereafter, on May 15, 1973, Kelly and an attorney for Chemical Bank appeared at IRS headquarters, where Kelly admitted that he had exchanged \$5-6,000 for Stanzione on a few occasions. After the interview at IRS, Kelly, in response to Demauro's query as to what had happened, told Demauro that he had admitted exchanging money for Stanzione.

In late June 1973 George Dekeersmaecker took over as manager of Kelly's branch, Branch 25. He was briefed by Demauro, who advised Dekeersmaecker that "that darn fool Kelly" had admitted to the IRS that he exchanged money for Stanzione. Demauro told Dekeersmaecker to make certain that Stanzione and Rusam Auto Sellers no longer had accounts at Branch 25. Dekeersmaecker thereafter told Kelly that Demauro had told him about the exchanging by Kelly.

On October 31, 1973 Kelly appeared before a federal grand jury and once again admitted the money exchanges for Stanzione. Kelly did not receive a merit increase at the end of 1973 and approached Dekeersmaecker in late 1974 to try and

enlist his help in obtaining a raise at the end of 1974. At that time Dekeersmaeker told Kelly what he had been told by Demauro the year before; that as far as Demauro was concerned, the worst mistake Kelly had made was admitting to the IRS that he had exchanged money. Dekeersmaeker persuaded Demauro that the exchanging had occurred some years before and that Kelly should receive the raise, which Kelly did in January 1975. Demauro claimed during his trial testimony that Kelly was lying when he testified that he had told Demauro about the exchanging and that Dekeersmaeker was lying when he said that Demauro told him about Kelly's exchanging activities.

d) Demauro had in the past suspected Spinelli of questionable activities. Approximately a year before the April 9, 1974 meeting Demauro reported to Collishaw that in the course of Spinelli's attendance at a seminar at the Stonier Graduate School of Banking in New Brunswick, N.J. Spinelli had been showing a large wad of money and claiming he had people on his payroll. Demauro and Collishaw looked into two bank accounts they knew Spinelli had in order to determine whether he had substantial sources of outside income other than his salary. The record does not indicate that this investigation was fruitful or that Spinelli was ever personally questioned by either Demauro or Collishaw.

Discussion

In order to sustain its burden of proof herein the Government was required to establish beyond a reasonable doubt:

- 1) That on or about the date specified, November 18, 1976, Demauro took an oath to testify truthfully before the aforementioned grand jury, a body authorized by law to administer oaths;
- 2) That Demauro made a false statement as to a matter about which he testified under oath as set forth in the indictment;
- 3) That at the time Demauro made this false statement he knew it to be false; and
- 4) That the matter as to which he testified falsely was material to the issues under inquiry by the grand jury.

With respect to the first element, there is no dispute that in November 1976 Demauro appeared before the aforesaid grand jury and testified under oath to the matters set forth in the indictment.

The falsity of Demauro's testimony, and his knowledge of that falsity at the time he testified, is demonstrated by an analysis of the individual answers in the light of the facts discussed above. First Demauro was asked this basic question:

Q. When is the first time that you learned that money-washing or the exchange of large amounts of money, small bills for large, was going on at Chemical Bank?

A. Probably in September of '75.^{4/}

The Court finds Demauro's answer to be knowingly false beyond a reasonable doubt. As early as 1968 or 1969 Demauro learned from Woop that the exchange of money was going on at Chemical Bank, although Woop mentioned no names. Around the same time Demauro was alerted by Roberto to the fact that book money was coming into Branch 94 of the Chemical Bank. But even more convincing is the testimony of Kelly and Dekeersmaeker, which shows that in 1973, if not earlier, Demauro was aware of Kelly's admitted exchange of money in 1969 (confirming what Demauro had been told by Woop and Roberto). Furthermore, Campisi told Demauro about money exchanging when Demauro specifically inquired about it during the call on the evening of April 8, 1974. Finally, the meeting on April 9, 1974 and Egan's references to Spinelli, coupled with Demauro's prior suspicions of Spinelli, could only have confirmed Demauro's prior knowledge that money exchanging was being practiced at Chemical Bank. This is not a case of faulty recollection at the time of his testimony before the grand jury but a case of intentionally false testimony.

Following the foregoing question and answer as to when he first learned of the exchange of money at Chemical Bank, the

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following questions were asked relating to the circumstances surrounding the April 9, 1974 meeting, and these allegedly perjurious answers were given:

Q. Didn't Agent Egan make mention of it [money-washing] in the 1974 meeting?

A. He did not mention it at Chemical Bank. He said banks throughout the country.

Q. Did he make mention of Mr. Spinelli at that meeting?

A. He mentioned Spinelli in connection with another matter.

Q. What did he say concerning Spinelli?

A. He said that Spinelli was under investigation--there was an account called Sky Chef and checks of Sky Chef were being laundered through an account called Express Glass at Spinelli's branch 107.

Q. Did he mention that IRS suspected that Mr. Spinelli was involved in narcotics operations?

A. Not to my knowledge. He never mentioned that.

Q. Had you received an anonymous phone call concerning Mr. Spinelli at about that time?

A. Yes, I did.

Q. What did the caller say?

A. To the best of my recollection just, I have a relative who works in Internal Revenue, your Mr. Spinelli is under investigation. That was the end of the call.

Q. And nothing more was said?

A. Not on the call, no.

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Opinion.

- Q. Following the anonymous phone call which you received concerning Mr. Spinelli, what if anything did you do?
- A. I called Mr. Egan and I talked to Mr. Collishaw.
- Q. Did you tell anyone else in the bank about the phone call?
- A. Not that I remember, no.
- Q. Do you recall making any inquiries of anyone at Chemical Bank at about that time concerning the washing of money?
- A. I might have just discussed it in general terms just to find out how it would be done, but nothing specific.
- Q. Did anyone working at the bank inform you at that time that money washing was going on?
- A. To the best of my knowledge, no.
- Q. You have no recollection of anyone telling you that?
- A. In what year are you saying now?
- Q. 1974.
- A. The only knowledge I had at all about washing money was what Mr. Egan told me.
- Q. Did you make inquiries of anyone else as to whether it was going on?
- A. As I say, just in general terms. I might have tried to find out if something like this was going on in a branch, how would you know it was going on, just in general terms.
- Q. Were all your inquiries answered in the negative?
- A. I didn't ask if it was going on. I asked how would you be able to detect if it was going on.
- Q. Why didn't you ask whether it was going on?

A. I don't know.

The answer to the first of the foregoing questions cannot be said to be false beyond a reasonable doubt. Egan did not specifically refer to money exchanges going on at a specific branch, nor did he specifically tell Demauro and Collishaw that he suspected that Spinelli was doing it or that it was being done in a number of Chemical branches.. Although the logic of the conversation--as testified to by Collishaw and by Egan--would seem to lead inescapably to the conclusion that Egan suspected Spinelli of money-washing for narcotics dealers, the Court cannot reach such a conclusion beyond a reasonable doubt.

The answers to the next two questions regarding Spinelli are not false; although evasive, they are literally true. Egan did make mention of Spinelli in connection with another matter, namely the Sky Chef matter. Answers which are unresponsive but true do not constitute perjury. Bronston v. United States, 409 U.S. 352 (1973). The answer to the fourth question--whether on April 9th Egan mentioned that the "IRS suspected that Mr. Spinelli was involved in narcotics operations"--has not been proven false beyond a reasonable doubt even though it is true that the IRS had received information upon which it could base such a suspicion. There is no evidence that Egan ever made such a statement, although his response to Collishaw's question

at least gave rise to an inference that Spinelli could be exchanging for D'Ambrosio, a narcotics dealer.

We come then to the five questions which relate to the anonymous phone call which Demauro received on April 8, 1974, and the three related answers which the Government charges were false. The Court finds beyond a reasonable doubt that the anonymous caller mentioned a connection between Spinelli and narcotics, and that Spinelli's two answers to the contrary were untruthful. Furthermore, the Court finds, beyond a reasonable doubt, that Demauro told Campisi about the anonymous call when he telephoned him on the evening of April 8, 1974 and that Demauro knowingly lied when he testified before the grand jury that he only remembered calling Egan and Collishaw. Demauro also gave knowingly untruthful answers to the questions as to any inquiries he may have made of anyone at Chemical Bank in April 1974 about the washing of money. This fact is clear from Campisi's testimony and that of Campisi's wife about the phone conversation on April 8, 1974. Campisi told Demauro that money exchanging or washing was going on all over the Bronx, and it is clear that Campisi meant and Demauro understood him to mean in the Bronx Chemical Bank branches for which Demauro was responsible. Demauro testified before the grand jury that the only knowledge he had in 1974 about money washing was what he learned from Egan and from general inquiries as to how it was done or how one could find out that

it was going on.^{5/} He further testified that he never asked whether the money exchanging was going on, and when questioned as to why he never asked, he responded "I don't know." The Court finds that the reason he never asked was because he already knew, at least after April 8, 1974, that money exchanging was going on all through the Bronx.

We come then to a series of questions and answers dealing with the incidents testified to by Woop, Roberto, Kelly and Dekeersmaeker:

Q. Do you know an individual by the name of Jim Woop, W-o-o-p?

A. Yes, I do.

Q. Do you recall telling him at some time prior to 1972 that the exchange of money was going on at branches of Chemical Bank?

A. To my knowledge, I never remember saying that.

Q. Do you recall an individual by the name of Sam Roberto, R-o-b-e-r-t-o?

A. Yes, I do.

Q. Do you recall him telling you around 1969 that someone at the branch where he works was washing money?

A. I do not recall that, no.

Q. Do you recall Mr. Roberto mentioning the changing of money to you at any time?

A. No. To the best of my knowledge, I do not remember that.

Q. Did it ever come to your attention that an employee of Chemical Bank by the name of Kelly, K-e-l-l-y, first name Paul, was washing money

for a customer of the bank?

A. I knew he did something, but I do not recall that it was washing money.

Q. What is it that you recall him doing?

A. All I remembered was that he had received apparently a subpoena to produce some bank records and then subsequently was asked to appear before a Grand Jury or somewhere and when he brought that to my attention I had him contact the legal department at Chemical Bank.

Q. Do you recall telling anyone at Chemical Bank that Kelly had been involved in the washing of money?

A. I do not recall that, no.

The Government has not established that Demauro's answers with respect to Woop and Roberto are false. Indeed, the Government has largely abandoned its contention that these answers were perjurious. Government's Summation 6, 8-9. Demauro's answer with respect to Woop is literally true, since it was Woop, not Demauro, who said exchanging was going on. Roberto merely told Demauro that book-money was coming into Branch 94. Roberto did not work at Branch 94 and testified at the trial that he did not discuss money washing with Demauro.

Demauro's responses to the questions regarding Kelly are false beyond a reasonable doubt. Demauro, when he testified at the trial, did not claim that he had forgotten about the Kelly incident when he testified before the grand jury. He testified that Kelly and Dekeersmaeker were lying when they

testified at trial about Kelly having admitted to washing money and Demauro's reaction when he was so informed.

Thus, the Court is convinced that Demauro was aware prior to April 8, 1974 that money exchanging was going on in Chemical Bank branches but did not take it seriously until he learned of the extent of the practice from Campisi on April 8, 1974 and of its relationship to drug trafficking from Egan on the following day.

The fact that Demauro responded to certain of the questions before the grand jury not with a straightforward denial but with a purported inability to recall the event or statement in question does not insulate him from perjury. In such a situation, the burden of proof is on the Government to show that, at the time of the allegedly perjured testimony, the witness actually remembered things even though he said that he did not remember them. United States v. Sweig, 441 F.2d 114, 117 (2d Cir.), cert. denied, 403 U.S. 932 (1971). The Government has sustained this burden in several ways. First, cross-examination of the defendant on the stand at trial elicited the admission that he would have remembered certain events if they had occurred. For instance, the defendant testified that he would have remembered it if Campisi had told him that exchanges were going on throughout the Bronx (Tr. at 359) or if the anonymous caller had stated that there was a problem with Spinelli and drugs. (Tr. at 351).

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Since the Court finds that such events did occur, it follows that the defendant must have remembered them and therefore testified falsely when he stated in the grand jury that he did not. Second, the Government elicited further testimony from the defendant concerning the uniqueness of certain events, such as the discussions with Kelly concerning Kelly's testimony before the grand jury--which was the only such incident that the defendant could recall from his five years of supervising the Upper Manhattan and Bronx branches--and the phone call with Campisi, which lasted 32 minutes according to phone company records and which was the first time that Demauro had ever called Campisi at home. As to the content of the latter conversation, the defendant testified at trial that he could remember nothing. Finally, the Court finds that the entire fabric of the defendant's testimony at trial revealed a concerted and continuous effort to give false testimony in the face of contradictory testimony from a long string of witnesses--Campisi, Egan, Kelly, Dekeersmaecker, Woop, Roberto, even Collishaw. The evidence of these witnesses leads to the inescapable conclusion that Demauro was informed of money-washing as early as 1968 and thereafter on a number of occasions. In the face of such proof, the Court finds that the defendant's testimony that he did not "recall" or "remember" certain events was false.^{6/}

Finally, the Court must find as the last element of

perjury, that the matter as to which Demauro testified was material to the issues under inquiry by the grand jury.

The well-settled legal standard for materiality is "whether the false testimony has a natural effect or tendency to influence, impede or dissuade the grand jury from pursuing its investigation." Carroll v. United States, 16 F.2d 951, 953 (2d Cir.), cert. denied, 273 U.S. 763 (1927); see United States v. Doulin, 538 F.2d 466, 470 (2d Cir.), cert. denied, 429 U.S. 895 (1976). In assessing materiality, a court must examine "both the nature of the inquiry at which the evidence was given and the evidence introduced at trial to prove its falsity in order to determine whether a truthful answer would conceivably have aided the grand jury investigation." United States v. Mancuso, 485 F.2d 275, 280-81 (2d Cir. 1973).

At the time Demauro testified, the grand jury was investigating a number of matters. First, it was seeking to obtain information about possible criminal violations of the Bank Secrecy Act, 31 U.S.C. §§ 1031-55, 1058-59, 1081-82, both by the Chemical Bank and by its employees. Second, the grand jury was also investigating possible conspiracies to violate the banking and narcotics laws resulting from narcotics dealers bribing Chemical Bank employees to exchange large quantities of small denomination bills for larger denomination bills which are more conveniently used in the narcotics trade.

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During the grand jury's investigation, it became apparent that the Chemical Bank had, during the period July 1, 1974 through June 30, 1975, failed to file the required Bank Secrecy Act reports for hundreds of transactions. These wholesale violations of the Act included a number of instances in which Chemical Bank employees in the Bronx and upper Manhattan had "washed" large amounts of cash for narcotics dealers and other criminals. Among the questions which the grand jury had to determine was whether the Chemical Bank was criminally liable for the failure to file the required Bank Secrecy Act forms, and, in this regard, it was essential to determine whether any responsible bank officer or employee knew or had reason to know that the Bank Secrecy Act would not be complied with. This was so, because in order to establish a criminal violation of the Bank Secrecy Act, it was necessary to prove that the bank "wilfully" violated the Act, and "wilfully" in this context means that the person or entity charged with doing the act knows what he is doing and that he either intentionally disregards the law or is plainly indifferent to its requirements. United States v. Carter, 311 F.2d 934, 943 (6th Cir. 1963); Riss & Co. v. United States, 262 F.2d 245, 249 (8th Cir. 1958); American Surety Co. of New York v. Sullivan, 7 F.2d 605, 606 (2d Cir. 1926); United States v. Time-D.C., Inc., 381 F. Supp. 730, 740 (W.D. Va. 1974).

More specifically, it was highly relevant to the grand

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jury's assessment of the possible criminal liability of the Bank to determine whether any of the Bank's officers were aware of a substantial risk that the Act would not be complied with. This was all the more relevant since the law is quite clear that a corporation such as the Bank cannot escape liability for the actions of its employees merely by "issuing general instructions without undertaking to enforce these instructions by means commensurate with the obvious risks."

United States v. Hilton Hotels Corp., 467 F.2d 1000, 1007 (9th Cir. 1972) (emphasis added); Continental Banking Co. v. United States, 281 F.2d 137, 149 (6th Cir. 1960).

With this background, it becomes clear why inquiries of Demauro about his knowledge of pre-June, 1974 money-washing were so important to the grand jury's investigation. Since the amounts washed at any one time amounted anywhere from \$10,000 to \$250,000, the bank employees were obviously receiving substantial amounts of money for the service they provided. Equally obvious was the fact that those individuals desiring to wash money were not going to do so if the bank employees were going to report the money-washing transactions under the Bank Secrecy Act to the IRS. Accordingly, if Demauro, a Vice-President of the Chemical Bank in charge during 1974 and early 1975 of the operations of the Bank's Bronx and upper Manhattan branches, knew in June 1974 (as the Act went into effect) that Bank employees over the years had been engaged in money-washing,

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then he was certainly cognizant of the substantial risk that such activities would continue after June 1974, as they in fact did. Moreover, Demauro's knowledge and failure to take all of the necessary steps to see to it that the Bank was in full compliance with the Act would necessarily and appropriately be imputed to the Bank, thereby giving rise to corporate criminal liability.

Accordingly, Demauro's claim that his pre-June 1974 knowledge of money-washing had no relevance to the grand jury's investigation has no basis in law or fact.

In sum, the Court finds that the defendant Paschal Demauro knowingly made false material declarations to the February 1976 Additional Grand Jury when he testified before that body on November 11, 1976 and that the defendant knew those declarations to be untrue. The Court therefore finds the defendant guilty as charged.

Dated: New York, New York
September 16, 1977

CHARLES H. TENNEY

U.S.D.J.

Footnotes.

UNITED STATES OF AMERICA

-against-

PASCHAL DEMAURO,

Defendant.

77 Cr. 145 (CHT)

FOOTNOTES

- 1/ The Bank Secrecy Act was intended to become effective in 1971. See Pub. L. No. 91-508, §§ 401(a)-(b), 84 Stat. 1125. The regulations promulgated thereunder took effect on March 31, 1972. Stark v. Connally, 347 F. Supp. 1242, 1244 (N.D. Cal. 1972) (three-judge court), aff'd in part, rev'd in part, 416 U.S. 21 (1974). A three-judge court then enjoined enforcement of the reporting provisions of the Act concerning domestic financial transactions, id. at 1251, an action which held this portion of the statute in limbo until the Supreme Court reversed the lower court on this point on April 1, 1974. California Bankers Ass'n v. Schultz, 416 U.S. 21 (1974).
- 2/ In September of 1975 Chemical Bank began an internal investigation into money washing and violations of the Bank Secrecy Act. In February of 1977 the Bank was indicted on 445 counts of violation of the Bank Secrecy Act, to which it subsequently pleaded guilty in April of 1977. None of the money washing transactions testified to at the trial of this case were included in the indictment against the Bank.
- 3/ See note 1 supra.
- 4/ The answers underscored were claimed by the Government to have been perjurious.
- 5/ The defendant does not contend that he failed to understand at the time that he testified before the grand jury that the terms "washing," "exchanging," and "laundering" were being used synonymously to mean the exchange of small bills for large. (Tr. at 331-32).
- 6/ The Sweig court also listed as one source of proof of perjury "proof of a motive to lie." United States v. Sweig, supra, 441 F.2d at 117. Such proof was supplied here in the form of Demauero's civil action for libel and unlawful discharge against Chemical Bank and many of its officers

FOOTNOTESii

as well as the attorney who conducted the Bank's internal investigation. Demauro's action was begun in 1976 after Demauro's discharge from the Bank but before his testimony before the grand jury. Thus, it behooved the defendant to give answers to the grand jury which were consistent with those which he had given in the Bank's internal investigation.

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Judgment and Probation Commitment Order.

United States of America vs.

United States District Court for

DEFENDANT

THE SOUTHERN DISTRICT OF NEW YORK

PASCAL DEMAURO

DOCKET NO. 77 Cr. 145 (CHT)

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
NOV.	4	1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

ERNEST BELFI, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYFINDING &
JUDGMENT

There being a finding/

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of making false material declarations to a Grand Jury, (Title 18, United States Code, Section 1623.).

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby sentenced to ONE(1) YEAR. Execution of Prison sentence is Suspended. Defendant is placed on UNSUPERVISED probation for a period of ONE(1) YEAR, subject to the Standing probation order of this Court.

-AND-

Defendant is FINED. \$1,000.00, fine to be paid during the probationary period. Defendant is not to be committed for non-payment of fine.

Defendant is continued on his own recognizance pending appeal.

SPECIAL
CONDITIONS
OF
PROBATION

DOCKETED AS
A JUDGMENT # 78,230
ON November 10, 1977

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

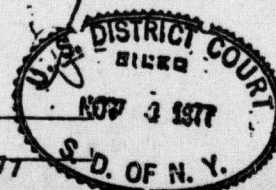
It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

CHARLES H. TENNEY

Date 11/4/77



OK

United States Court of Appeals
for the Second Circuit

United States of America,

Appellee,

against

Paschal Demauro,

Defendant-Appellant.

AFFIDAVIT
OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Paul Perlmutter, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 3000 Bronx Park East, Bronx, New York, 10461

That on December 21, 1977, he served 2 copies of Brief and 1 copy of Appendix

on Robert B. Fiske, Esq.,
1 St Andrews plaza,
New York, New York, 10007.

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

Perlmutter

Sworn to before me this
21 day of December

, 19 77.

NOTARY PUBLIC
IN THE STATE OF NEW YORK
My Comm. Expires 12-31-79
ROBERT B. FISKE, Esq.